

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§9.31-9.35 and §§9.38-9.41 and the repeal of §§9.36 and 9.37, relating to Contracting for Architectural, Engineering, and Surveying Services to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A, B, and C are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§9.31-9.35 and §§9.38-9.41 and the repeal of §§9.36 and 9.37 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

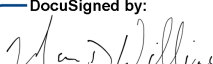
Submitted and reviewed by:

DocuSigned by:

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Director, Professional Engineering
Procurement Services Division

Recommended by:

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Executive Director

116056 July 29 2021

Minute	Date
Number	Passed

Proposed Preamble

The Texas Department of Transportation (department) proposes the amendments to §§9.31-9.35 and §§9.38-9.41 and the repeal of §§9.36 and 9.37, relating to Contracting for Architectural, Engineering, and Surveying Services.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

This rulemaking streamlines the selection process for architectural, engineering, and surveying service contracts in several ways, including by eliminating the Request for Qualifications (RFQ) and using only the Request for Proposals (RFP) as the solicitation method for professional services contracts. The response requiring a Statement of Qualifications (SOQ) is eliminated, with the Proposal being the only response format used by the department. This change will align the non-federal selection process, which is sometimes referred to as the state process, with the federal selection process and will reduce the risk of confusion by utilizing only one process for procurements. Under the federal requirements in 23 United States Code of Federal Regulations (CFR) 172, the RFQ is optional; however, the RFP is required.

Amendments allow a non-federal indefinite deliverable contract to be extended beyond five years and increase the period to issue work to four years, instead of three. These changes provide flexibility by allowing the department to keep the

1 design provider under contract to provide construction phase
2 services.

3
4 Amendments to §9.31, Definitions, remove or amend definitions to
5 align with the elimination of the SOQ and RFQ and other
6 amendments. The definitions are amended to remove the terms
7 "statements of qualifications" or "qualification" and replace
8 with "proposal" or "proposals." The definitions for RFQ and SOQ
9 are removed because the department is streamlining the process
10 and is no longer using the RFQ and SOQ process. The definition
11 for "Request for Proposal (RFP)" is clarified to identify the
12 RFP as the advertisement for an architectural, engineering, or
13 surveying contract. This amendment will streamline the selection
14 processes. The definition of "solicitation" is removed since the
15 RFP is the only advertisement format.

16
17 Amendments to §9.32, Selection Processes, Contract Types,
18 Selection Types, and Projected Contracts, to streamline the
19 selection processes and align the non-federal selection process
20 with the federal selection process. Section 9.32(a) is amended
21 to add the non-federal (state) process as a selection process
22 and delete the comprehensive, streamlined, and accelerated
23 selection processes. Both the non-federal and federal processes
24 will have options for selection to be made with or without
25 interviews. Section 9.32 is also amended to replace the term
26 "solicitation" with "RFP" to align with a single advertisement
27 format. Subsection (b)(1)(B) is amended to change the three-year

1 limit on issuing work authorizations to four years after the
2 date of contract execution. This provides flexibility by
3 allowing the department to continue to issue work authorizations
4 for projects that can be completed before the termination date
5 in the contract. Subsection (b)(1)(C) adds text to maintain the
6 limit on contracts procured using the federal selection process
7 to a contract period of no more than five years. This addition
8 is consistent with federal guidelines for contracts procured
9 with the federal selection process and adds flexibility to
10 contracts procured using the non-federal process. By allowing
11 indefinite deliverable contracts procured using a non-federal
12 selection process to be extended beyond five years, the
13 department may be able to keep the design provider under
14 contract to provide construction phase services.

15
16 Amendments to §9.33, Precertification, replace the term
17 "solicitation" with "RFP" to align with a single advertisement
18 format.

19
20 Amendments to §9.34, Comprehensive Process, rename the
21 comprehensive process to the non-federal (state) process and
22 align the section with the federal selection process. The
23 amendments streamline the selection processes. Section 9.34 is
24 also amended to replace the term "solicitation" with "RFP" to
25 align with a single advertisement format. Subsection (a) is
26 amended to delete the reference to specific deliverable
27 contracts \$1 million or more in value and allows the non-federal

(state) process to be used for any contract that is not subject to the federal process. This deletion will align the non-federal selection process with the federal selection process. Subsection (b)(8)(B) is amended to add Group 17, Facilities Engineering, to the work groups that are exempted from administrative qualifications. This change aligns this type of work with the architectural exemption for contracts procured using the non-federal process.

Subsections (d), (e), (g), and (h) are amended to replace the Request for qualifications (RFQ) and the Statement of qualifications (SOQ) with the Request for Proposals (RFP) and proposal, respectively. These changes will streamline the selection process since the department is no longer using the RFQ and SOQ process. Subsection (g)(3) is amended to add a statement to include the prime provider's past performance scores in the evaluation of the responsive proposals. This amendment streamlines the process by incorporating the provider's past performance score early in the selection process.

Subsection (i) is amended to clarify that the department will determine whether interviews are required in the non-federal selection process. This amendment aligns the non-federal process with the federal process. New Subsection(i)(1) adds the requirement for an interview for specific deliverable contracts of \$5 million or more in value or any indefinite deliverable

1 contract for higher-risk services based on complexity,
2 anticipated project costs, number of contracts, or type of
3 services. This amendment aligns the non-federal process with the
4 federal process and increases the dollar value threshold for
5 interviews on specific deliverable contracts to streamline the
6 interview process. Subsection(i)(3) is amended to delete the use
7 of the prime provider's past performance scores during the
8 interview stage of the non-federal selection process. This
9 amendment aligns this subsection with subsection (g)(3).

10
11 Subsection(j)(1) is amended to clarify the basis for final
12 selection dependent on whether an interview is required. These
13 additions align the non-federal process with the federal
14 process. Subsection (j)(2) is amended to clarify that the
15 process for breaking ties will be using scores from either the
16 interview or the proposal, if no interviews are required. This
17 clarification aligns the non-federal with the federal process.
18 The title of the section is changed to "Non-federal Process."

19
20 Amendments to §9.35, Federal Process, delete references to the
21 "comprehensive" process and replace them with the "non-federal"
22 process. Each paragraph is amended to reference back to the
23 applicable paragraph in §9.34 to align the federal and non-
24 federal selection processes. Section 9.35 is also amended to
25 replace the term "solicitation" with "RFP" to align with a
26 single advertisement format. The text in subsections (d), (e),
27 and (g) is deleted and a reference to §9.34(d), §9.34(e),

1 §9.34(h)-(j), respectively, is added. Subsections (f) and (h)
2 are deleted. The amendments to §9.35 align the federal selection
3 process and the non-federal selection process, but do not alter
4 the federal selection process.

5
6 Sections 9.36 and 9.37 are repealed. The three non-federal
7 processes (comprehensive, streamlined, and accelerated) have
8 been replaced with a single non-federal selection process in
9 §9.34, which has an option for including interviews. These
10 amendments streamline the non-federal process and align it with
11 the federal process.

12
13 Amendments to §9.38, Emergency Contract Process, and §9.39,
14 Urgent and Critical Process, change the reference to the heading
15 of §9.34 in accordance with the amendment of that heading made
16 in this rulemaking.

17
18 Amendments to §9.40, Negotiations, replace the term
19 "solicitation" with "RFP" to align with a single advertisement
20 format and replace the references to the comprehensive,
21 streamlined, or accelerated processes are replaced with
22 references to the non-federal process to align with changes made
23 to §9.34.

24
25 Amendments to §9.41, Contract Administration, make changes to
26 provisions relating to performance evaluations. Amendments to
27 subsection (d)(1) allow the evaluation of a provider employee

1 who is involved with managing a work authorization and replace
2 the text that requires a performance evaluation of the provider
3 project manager and firm during the contract activity with a
4 requirement for evaluations to be conducted at least once every
5 12 months. These amendments allow a department project manager
6 to evaluate both the prime provider's project manager and a
7 member of the prime provider's staff assigned to represent the
8 prime provider on a work authorization, providing more
9 flexibility to the department project manager to give feedback
10 to the provider, and provide clarity to the department project
11 manager for completing an annual evaluation for the provider.

12
13 FISCAL NOTE

14 Stephen Stewart, Chief Financial Officer, has determined, in
15 accordance with Government Code, §2001.024(a)(4), that as a
16 result of enforcing or administering the rules for each of the
17 first five years in which the proposed rules are in effect,
18 there will be no fiscal implications for state or local
19 governments as a result of enforcing or administering the rules.

20
21 LOCAL EMPLOYMENT IMPACT STATEMENT

22 Martin L. Rodin, P.E., Professional Engineering Procurement
23 Services Division Director, has determined that there will be no
24 significant impact on local economies or overall employment as a
25 result of enforcing or administering the proposed rules and
26 therefore, a local employment impact statement is not required
27 under Government Code, §2001.022.

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PUBLIC BENEFIT

Mr. Rodin has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be a streamlined selection processes for contracts for architectural, engineering, and surveying services, increased flexibility in using indefinite deliverable contracts, and clarification of the prime provider performance evaluation process.

COSTS ON REGULATED PERSONS

Mr. Rodin has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

1 GOVERNMENT GROWTH IMPACT STATEMENT

2 Mr. Rodin has considered the requirements of Government Code,
3 §2001.0221 and anticipates that the proposed rules will have no
4 effect on government growth. He expects that during the first
5 five years that the rule would be in effect:

6 (1) it would not create or eliminate a government program;

7 (2) its implementation would not require the creation of
8 new employee positions or the elimination of existing employee
9 positions;

10 (3) its implementation would not require an increase or
11 decrease in future legislative appropriations to the agency;

12 (4) it would not require an increase or decrease in fees
13 paid to the agency;

14 (5) it would not create a new regulation;

15 (6) it would not expand, limit, or repeal an existing
16 regulation;

17 (7) it would not increase or decrease the number of
18 individuals subject to its applicability; and

19 (8) it would not positively or adversely affect this
20 state's economy.

21

22 TAKINGS IMPACT ASSESSMENT

23 Mr. Rodin has determined that a written takings impact
24 assessment is not required under Government Code, §2007.043.

25

26 SUBMITTAL OF COMMENTS

1 Written comments on the proposed amendments to §§9.31-9.35 and
2 §§9.38-9.41 and the repeal of §§9.36 and 9.37 may be submitted
3 to Rule Comments, General Counsel Division, Texas Department of
4 Transportation, 125 East 11th Street, Austin, Texas 78701-2483
5 or to RuleComments@txdot.gov with the subject line "*PEPS Rules*."
6 The deadline for receipt of comments is 5:00 p.m. on September
7 13, 2021. In accordance with Transportation Code,
8 §201.811(a)(5), a person who submits comments must disclose, in
9 writing with the comments, whether the person does business with
10 the department, may benefit monetarily from the proposed
11 amendments, or is an employee of the department.

12
13 STATUTORY AUTHORITY

14 The amendments and repeal are proposed under Transportation
15 Code, §201.101, which provides the Texas Transportation
16 Commission (commission) with the authority to establish rules
17 for the conduct of the work of the department.

18
19 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING
20 Government Code, Chapter 2254, Subchapter A (Professional
21 Services Procurement Act) and Transportation Code, §223.041.

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND
SURVEYING SERVICES

§9.31. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Consultant Certification Information System (CCIS)--A computer system used to collect and store information related to the department's certification of providers.

(2) Consultant selection team (CST)--The department's team that evaluates [~~statements of qualification~~₇] proposals[₇] and interviews and selects the provider based on demonstrated qualifications.

(3) Department--The Texas Department of Transportation.

(4) Department project manager--A department employee who manages a project from project initiation and contracting through project close-out, including the oversight and management of deliverables and provider performance.

(5) Engineering and design related services--Program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or architectural related services; or professional services of an architectural or engineering nature that are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services.

1 (6) Executive director--The executive director of the
2 department.

3 (7) Indefinite deliverable contract--A contract
4 containing a general scope of services that identifies the types
5 of work that will later be issued under work authorizations, but
6 does not identify deliverables, locations, or timing in
7 sufficient detail to define the provider's responsibilities
8 under the contract.

9 (8) Interview and Contract Guide (ICG)--A document
10 provided by the department to short-listed providers that
11 includes instructions to prepare for the interview.

12 (9) Multiphase contract--A project specific contract
13 where the solicited services are divided into phases whereby the
14 specific scope of work and associated costs may be negotiated
15 and authorized by phase as the project progresses.

16 (10) Non-listed category (NLC)--A formal
17 classification used to define a specific sub-discipline of work
18 and provide the minimum technical qualifications for performing
19 the work. NLCs address project-specific work categories not
20 covered by the standard work categories.

21 (11) Precertification--A department process conducted
22 to verify that a provider meets the minimum technical
23 requirements to perform work under a standard work category.

24 (12) Prime provider--A firm that provides or proposes
25 to provide architectural, engineering, or surveying services
26 under contract with the state.

(13) Prime provider project manager--An employee of a prime provider who serves as the point of contact for the provider to coordinate project deliverables and project performance with the department.

(14) Professional Engineering Procurement Services (PEPS) Division--The department's division responsible for overseeing procurement planning, provider selection, leading the contract negotiations, administering the contract, and processing invoices.

(15) Professional Engineering Procurement Services (PEPS) Division Director--The head of the PEPS Division.

(16) Proposal--A response to a request for proposal that provides details on a provider's specific technical approach and qualifications.

(17) Provider--A prime provider or subprovider.

(18) Relative importance factor (RIF)--The numerical weight assigned to an evaluation criterion, used by the consultant selection team to score [~~statements of qualification,~~] proposals[~~,~~] and interviews.

(19) Request for proposal (RFP)--A public announcement that advertises the department's intent to enter into an architectural, engineering, or surveying contract [~~A document provided by the department to short-listed providers that provides instructions for submitting a proposal and may include instructions to prepare for the interview~~].

1 ~~[(20) Request for qualification (RFQ)--A public~~
2 ~~announcement that advertises the department's intent to enter~~
3 ~~into an architectural, engineering, or surveying contract and~~
4 ~~provides instructions for the preparation and submittal of a~~
5 ~~statement of qualification generally referred to as a~~
6 ~~solicitation.]~~

7 (20) ~~[(21)]~~ Short list--The list of prime providers
8 most qualified to perform the services specified in an RFP~~[RFQ]~~,
9 as demonstrated by the proposal~~[statement of qualification]~~
10 scores.

11 ~~[(22) Solicitation--A request for qualification].~~

12 (21) ~~[(23)]~~ Specific deliverable contract--A contract
13 containing a specific scope of services that identifies
14 deliverables, locations, and timing in sufficient detail to
15 define the provider's responsibilities under the contract,
16 although additional requirements may later be specified in work
17 authorizations.

18 (22) ~~[(24)]~~ Standard work category--A formal
19 classification, developed by the department, used to define a
20 specific sub-group of work and provide the minimum technical
21 qualifications for performing the work.

22 ~~[(25) Statement of qualification (SOQ)--A document~~
23 ~~prepared by a prime provider, submitted in response to a request~~
24 ~~for qualification.]~~

25 (23) ~~[(26)]~~ Subprovider--A firm that provides or
26 supports, or proposes to provide or support, architectural,

1 engineering, or surveying services under contract with a prime
2 provider.

3
4 §9.32. Selection Processes, Contract Types, Selection Types,
5 and Projected Contracts.

6 (a) Selection processes. The department will issue RFPs
7 [~~solicitations~~] and select providers under the following
8 selection processes: non-federal under §9.34 of this subchapter
9 (relating to Non-federal Process [comprehensive], federal under
10 §9.35 of this subchapter (relating to Federal Process
11 [streamlined, accelerated], emergency under §9.38 of this
12 subchapter (relating to Emergency Contract Process), and urgent
13 and critical under §9.39 of this subchapter (relating to Urgent
14 and Critical Process).

15 (b) Contract types. The department will offer three types
16 of contracts: indefinite deliverable, specific deliverable, and
17 multiphase.

18 (1) An indefinite deliverable contract may be used for
19 a single project or for multiple projects. The RFP
20 [~~solicitation~~] will describe the typical work types to be
21 performed under the contract.

22 (A) Categorical limitations on contract dollar
23 value may be established by the executive director or the
24 executive director's designee.

25 (B) The contract period in which work
26 authorizations may be issued may not be longer than four [~~three~~]

1 years after the date of contract execution, unless approved by
2 the Texas Transportation Commission.

3 (C) Supplemental agreements may be issued to
4 extend the contract period, but only as necessary to complete
5 work on an existing work authorization. The contract period for
6 contracts procured using the process provided by §9.35 of this
7 subchapter (relating to Federal Process) may not extend more
8 than five years beyond the execution date.

9 (2) A specific deliverable contract may be used for a
10 single project or for multiple projects. The RFP [~~solicitation~~]
11 will specify the specific deliverables to be provided under the
12 contract.

13 (3) A multiphase contract may be used for a single
14 project or for multiple projects. The RFP [~~solicitation~~] will
15 describe the services to be provided under the contract and will
16 divide the services into phases. The specific scope of work may
17 be established, and the associated costs negotiated and
18 authorized, by phase as the project progresses.

19 (c) Selection types.

20 (1) Single contract selection. One contract will
21 result from the RFP [~~solicitation~~].

22 (2) Multiple contract selection. More than one
23 contract of similar work types will result from the RFP
24 [~~solicitation~~]. The RFP [~~solicitation~~] will indicate the number
25 and type of contracts.

(d) Projected contracts list. Quarterly, the department will publish on the department's website a list of projected contracts for architectural, engineering, and surveying services.

§9.33. Precertification.

(a) Standard work categories. Precertification establishes the minimum technical qualifications to perform work under a standard work category. The department may add, revise, or delete a standard work category.

(b) Contract eligibility.

(1) To be eligible to perform work under a standard work category, a firm providing a task leader must have active precertification status in that work category by the closing date of the RFP [~~solicitation~~].

(2) The department will not delay the selection process or the contract execution to accommodate a provider that is not in active precertification status.

(c) Precertification status of firms and employees.

(1) A firm is precertified in a standard work category only if it employs an individual precertified in that category.

(2) A firm that employs an individual who is precertified in multiple standard work categories is, by extension, precertified in each of those categories.

(3) A firm's precertification status is only applicable to the incorporated business entity that employs the

individual upon whom the firm's precertification status is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity.

(4) An employee's precertification status is based solely on the individual's qualifications. A firm's qualifications may not serve as a basis for precertifying an employee.

(5) Precertification status shall transfer with the employee, should the employee leave the firm.

(d) Precertification website. The department will maintain a precertification website that will include:

- (1) the definitions of the standard work categories;
- (2) the minimum technical qualifications to perform work under the standard work categories; and
- (3) the precertification application form, with instructions.

(e) Application and review process.

(1) To apply for precertification in a standard work category, a firm must employ an individual qualified to become precertified in that category and present the individual's qualifications in a precertification application.

(2) The department will consider the following factors in reviewing an application:

- (A) the minimum technical qualifications as applicable;

1 (B) the individual's professional license or
2 registration;

3 (C) the individual's experience and training; and

4 (D) any record that shows that the individual or
5 the firm is the subject of a final administrative or judicial
6 determination that the employee or firm has violated a statute
7 or rule of a state licensing entity related to occupational or
8 professional conduct.

9 (3) If a submitted application is incomplete or
10 inaccurate, the firm will be given an opportunity to correct the
11 application and provide additional information. The firm must
12 provide the information within 30 days after the day that it
13 receives the department's notice that the application is
14 incomplete or inaccurate.

15 (4) If the information is not provided under paragraph
16 (3) of this subsection within the 30-day period prescribed by
17 that paragraph, the application will be processed at the end of
18 that 30-day period with the information available.

19 (5) The department will make a good faith effort to
20 make a precertification determination within 60 days after the
21 day that the department receives a complete and accurate
22 application or if paragraph (4) of this subsection applies,
23 within 60 days after the day that the 30-day period prescribed
24 by that paragraph ends.

25 (f) Appeal. A firm may appeal a precertification denial to
26 the department by submitting additional information within 30

1 days after the day that it receives written notification of the
2 denial. The information must justify why precertification
3 should be granted. The department will review the information
4 and make a second precertification determination. A firm may
5 file a written complaint regarding a second precertification
6 denial to the executive director or the executive director's
7 designee.

8 (g) Updates. A firm must report any change in its
9 application information no later than 45 days after the day that
10 the change occurs.

11 (h) Data management. A firm's application information will
12 be maintained in the Consultant Certification Information System
13 (CCIS).

14 (i) Annual renewal. To maintain contract eligibility, a
15 firm must renew its precertification status no later than March
16 31 of each year. The firm must submit its annual renewal
17 through the CCIS.

18 (1) A firm that has renewed its precertification
19 status by the annual deadline will maintain an active
20 precertification status in the standard work categories in which
21 it is precertified.

22 (2) A firm that has not renewed its precertification
23 by the annual deadline will be placed in inactive status.

24
25 §9.34. Non-federal [~~Comprehensive~~] Process.

1 (a) Applicability. The non-federal ~~[comprehensive]~~
2 process, also referred to as the state process, described under
3 this section may be used for contracts that are ~~[must be used~~
4 ~~for any specific deliverable contract that is \$1 million or more~~
5 ~~in value and is]~~ not subject to §9.35 of this subchapter
6 (relating to Federal Process).

7 (b) Administrative qualification.

8 (1) Administrative qualification is a process used by
9 the department to verify that a provider performing engineering
10 and design related services has an indirect cost rate that meets
11 department requirements. Except as provided by paragraph (8) of
12 this subsection, to compete for a contract under this section a
13 provider performing engineering and design related services
14 either must be administratively qualified or must accept an
15 indirect cost rate under paragraph (7) of this subsection.

16 (2) Factors in determining administrative
17 qualification.

18 (A) A provider may demonstrate administrative
19 qualification by an audit or by self-certification.

20 (i) An audit may be performed by an
21 independent certified public accountant (CPA), an agency of the
22 federal government, another state transportation agency, or a
23 local transit agency. An audit performed by an independent CPA
24 must be conducted in accordance with the current versions of 48
25 C.F.R. Part 31, the Generally Accepted Government Auditing
26 Standards (GAGAS), and the American Association of State Highway

1 and Transportation Officials (AASHTO) Uniform Audit and
2 Accounting Guide. The provider must provide the department with
3 unrestricted access to the audit work papers, records, and other
4 information as requested by the department.

5 (ii) Self-certification may be conducted by
6 the provider and must include a cost report and an internal
7 controls report. The self-certified cost report must comply
8 with the current versions of 48 C.F.R. Part 31, the GAGAS, and
9 the AASHTO Uniform Audit and Accounting Guide. The self-
10 certified internal control report must certify the provider has
11 internal controls in place within its organization. Both the
12 cost report and the internal control report must be signed by a
13 company officer and notarized.

14 (B) The audit or self-certification shall be
15 based on the provider's fiscal year. The indirect cost rate, as
16 approved by the department, shall become effective six months
17 after the end of the provider's fiscal year, or immediately if
18 filed more than six months after the end of the provider's
19 fiscal year. It shall be effective no more than twelve months
20 and shall expire eighteen months after the end of the fiscal
21 year upon which it is based, except that, for the purpose of
22 competition referred to in paragraph (1) of this subsection,
23 negotiations referred to in subsection (b)(5) of this section,
24 or administratively qualified under §9.35(b) of this subchapter
25 (relating to Federal Process), the department may extend an
26 approved indirect cost rate for 90 days if the department has

1 received the provider's annual administrative qualifications
2 information submittal before the rate's expiration date.

3 (C) A provider must submit on an annual basis:

4 (i) a cognizant letter of concurrence issued
5 by a state transportation agency in accordance with the AASHTO
6 Uniform Audit and Accounting Guide; or

7 (ii) a compensation analysis for all
8 executives and employees in accordance with the AASHTO Uniform
9 Audit and Accounting Guide for which the provider may use either
10 the National Compensation Matrix or surveys as prescribed in the
11 AASHTO Uniform Audit and Accounting Guide.

12 (D) A provider's payment of a bonus or incentive
13 compensation to an employee is allowable only if the bonus or
14 compensation is paid under a written bonus plan that:

15 (i) is consistent with the AASHTO Uniform
16 Audit and Accounting Guide that identifies eligibility
17 requirements and provides details regarding how bonus payments
18 are determined; and

19 (ii) includes an adequate description of the
20 performance measures used to determine bonus amounts, such as
21 employee performance evaluation ratings, contributions toward
22 the firm's revenue growth, and responsibilities for cost
23 containment.

24 (E) A provider must submit on an annual basis the
25 salary rates for employees that it anticipates using on
26 contracts that may be executed during the next 12-month period.

1 The department will review the salary rates for reasonableness
2 and consistency with industry norms and when approved, will
3 apply the rates to contracts negotiated within the next 12-month
4 period. During the 12-month period, the provider must submit
5 the salary rate for any employee who is used on a contract and
6 whose salary rate has not been provided under this subparagraph.
7 The department will continue to negotiate contracts on an
8 individual basis during the initial 12-month implementation
9 period.

10 (F) The department may audit the indirect cost
11 rate of a provider under contract with, or seeking to do
12 business with, the department. These audits will be conducted
13 in accordance with the criteria outlined in this subsection.

14 (G) A provider must submit a signed Certification
15 of Final Indirect Costs with the audit report or self-
16 certification. The certification must follow the requirements
17 of the Federal Highway Administration.

18 (H) The department will treat the cost data as
19 confidential pursuant to 23 U.S.C. Section 112 and 23 C.F.R.
20 Part 172.

21 (3) Submittal and review process for administrative
22 qualification.

23 (A) A provider must submit its administrative
24 qualification information to the department in accordance with
25 the instructions on the department's website.

1 (B) Upon review of an audit report or self-
2 certification received from a provider, the department may
3 request additional information from the provider. If the
4 submittal is not complete and accurate, the department will
5 return it to the provider for correction. The provider shall
6 submit the additional information or the corrected
7 administrative qualification submittal within 30 days after the
8 day that it receives the department's request. If the
9 information is not received within the 30-day period, the
10 department will reject and not process the administrative
11 qualification submittal.

12 (C) If an administrative qualification submittal
13 is rejected under subparagraph (B) of this paragraph, the
14 provider may refile a corrected audit report or self-
15 certification and shall include any previously requested
16 information. The provider may not refile earlier than 90 days
17 after the day that the department sends the notice rejecting the
18 submittal.

19 (D) The department will make a good faith effort
20 to complete the administrative qualification review process
21 within 60 days after the day that it receives a complete and
22 accurate audit report or self-certification.

23 (4) Administrative qualification is applicable only to
24 the incorporated business entity upon which the indirect cost
25 rate is based and does not extend to a subsidiary, affiliate, or
26 parent of the incorporated entity, except as provided by this

1 paragraph. A corporation may administratively qualify a
2 business segment of the corporation if the business segment is
3 not limited to a geographical area that is less than the entire
4 state of Texas and if the corporation is able to demonstrate and
5 justify the allocation of costs between the business segment and
6 other corporate operations. If a corporate business segment is
7 administratively qualified, the resulting indirect cost rate is
8 not applicable to staff not employed by the business segment.

9 (5) In negotiations under \$9.38 [~~9.40~~] of this
10 subchapter (relating to Emergency Contract
11 Process [~~Negotiations~~]), the department will use the selected
12 firm's indirect cost rate information that is in effect at that
13 time the negotiations begin.

14 (6) The department will not provide a firm's
15 administrative qualification information, including salary
16 information, to the department's staff conducting negotiations
17 or the consultant selection team before the selection of that
18 firm.

19 (7) Providers not administratively qualified. The
20 department may contract with a prime provider or allow the use
21 of a subprovider that is not administratively qualified if:

22 (A) the provider has been in operation, as
23 currently organized, for less than one fiscal year and the
24 provider accepts an indirect cost rate developed by the
25 department; or

(B) on request by the department during the selection process, the prime provider provides written certification that the prime provider or subprovider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate developed by the department.

(8) Exemptions to administrative qualification.

(A) A non-engineering firm is exempt from the administrative qualification requirement of this section.

(B) A provider performing a service under standard work category 18.2.1, subsurface utilities engineering, or any of the following work groups, as listed on the department's precertification website, is exempted from administrative qualification, to the extent of the service being performed:

(i) Group 6, bridge inspection;

(ii) Group 12, materials inspection and testing;

(iii) Group 14, geotechnical services;

(iv) Group 15, surveying and mapping; ~~and~~

(v) Group 16, architecture; and

(vi) Group 17, facilities engineering.

(C) The department may exempt services other than those indicated in subparagraph (B) of this paragraph on a case-by-case basis. Any request for an exemption must be received by the department by the closing date of the RFP ~~[solicitation]~~.

(c) Consultant selection team (CST).

NOTE: Additions underlined

Deletions in []

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Exhibit B

(1) The department shall use a CST in selecting providers under this section.

(2) The CST shall be composed of at least three department employees.

(3) At least one CST member must be a professional engineer, for engineering contracts; a registered architect, for architectural contracts; and either a professional engineer or registered professional land surveyor, for surveying contracts.

(4) If a CST member leaves the CST during the selection process, the process may continue with the remaining members, subject to paragraph (3) of this subsection.

(d) Request for proposals [~~qualifications (RFQ)~~]. Not fewer than 14 calendar days before the RFP [~~solicitation~~] closing date, the department will post on a web-based bulletin board an RFP [~~RFQ~~] providing the contract information and specifying the requirements for preparing and submitting a proposal [~~statement of qualification~~].

(e) Proposal [~~Statement of qualification (SOQ)~~]. To be considered, a proposal [~~an SOQ~~] must comply with the requirements specified in the RFP [~~RFQ~~].

(f) Replacements.

(1) An individual may be proposed as a replacement for the prime provider project manager prior to the department's notification of firms short-listed for an interview or, if an interview is not required, prior to selection.

1 (2) An individual may be proposed as a replacement for
2 a task leader prior to contract execution.

3 (3) A proposed replacement for the prime provider
4 project manager must be an employee of the prime provider. A
5 proposed replacement for a task leader must be an employee of
6 the prime provider or its subprovider. A proposed replacement
7 for either position must satisfy the applicable precertification
8 and non-listed category requirements.

9 (g) Proposal [~~SOQ~~] screening and evaluation.

10 (1) The department may disqualify a proposal [~~an SOQ~~]
11 if the department has knowledge that a firm on the project team
12 or an employee of a firm on the project team is the subject of a
13 final administrative or judicial determination that the firm or
14 employee has violated a statute or rule of a state licensing
15 entity related to occupational or professional conduct.

16 (2) If a proposal [~~an SOQ~~] is not disqualified under
17 paragraph (1) of this subsection, the CST will screen the
18 proposal [~~SOQ~~] to determine whether it complies with the
19 requirements specified in the RFP [~~RFQ~~]. Each proposal [~~SOQ~~]
20 that meets these requirements will be considered responsive to
21 the RFP [~~RFQ~~] and evaluated.

22 (3) The CST will evaluate the responsive proposal
23 [~~SOQ~~] according to the evaluation criteria detailed in the RFP
24 [~~RFQ~~] based on factors the department has identified as most
25 likely to result in the selection of the most qualified
26 provider, including the prime provider's past performance

1 scores, as contained in the department's database, that reflect
2 less than satisfactory performance.

3 (h) Short list. The short list will consist of the most
4 qualified providers, as indicated by the proposal [~~SOQ~~] scores.

5 (1) For single contract selections, the minimum number
6 of short-listed prime providers is three, unless fewer than
7 three prime providers submitted a responsive proposal [~~SOQ~~].

8 (2) For multiple contract selections, the minimum
9 number of short-listed prime providers is the number of desired
10 contracts plus three, unless fewer than the desired number of
11 prime providers submitted a responsive proposal [~~SOQ~~].

12 (3) Notification.

13 (A) The department will notify each prime
14 provider that submitted a proposal [~~an SOQ~~] whether it was
15 short-listed.

16 (B) The department will notify each short-listed
17 prime provider whether a short list meeting will be held.

18 (i) Short list evaluation.

19 (1) An interview is required for any specific
20 deliverable contract that is \$5 million or more in value or any
21 indefinite deliverable contract for higher-risk services as
22 determined by the department based on project complexity,
23 anticipated project costs, number of contracts, or type of
24 services.

25 (2) The RFP will state whether an interview will be
26 required as part of the short list evaluation. [~~Interviews. The~~]

1 ~~department will evaluate the short-listed providers through~~
2 ~~interviews.]~~ The department will issue an Interview and
3 Contract Guide (ICG) to each short-listed prime provider. The
4 ICG will provide contract information and specify the
5 requirements for the interview.

6 (3) ~~[(2)] [Short list evaluation criteria.]~~ The CST
7 will evaluate the interviews according to the criteria specified
8 in the ICG~~[, including the prime provider's past performance~~
9 ~~scores in the Consultant Certification Information System~~
10 ~~database reflecting less than satisfactory performance]~~.

11 (j) Selection.

12 (1) Basis of final selection.

13 (A) If interviews are required, the ~~[The]~~ CST
14 will select the best qualified provider, as indicated by the
15 interview ~~[short list]~~ scores.

16 (B) If interviews are not required, the CST will
17 select the best qualified provider, as indicated by the proposal
18 scores.

19 (2) Tie scores. The PEPS Division Director will break
20 a tie using the following method.

21 (A) The first tie breaker will be the scores for:
22 (i) the interview criterion with the highest
23 RIF; or

24 (ii) if interviews are not required, the
25 proposal criterion with the highest RIF.

(B) The remaining [~~interview~~] criteria shall be compared in the order of decreasing RIF until the tie is broken.

(C) If the providers have identical scores on all of the [~~interview~~] criteria, the provider will be chosen by random selection.

(3) Notification. The department will:

(A) provide written notification to the prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each short-listed prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the short list and the selected provider on a web-based bulletin board.

(4) Appeal. A provider may file a written appeal concerning the selection process with the executive director or the executive director's designee as provided under §9.7 of this chapter (relating to Protest of Contract Practices or Procedures).

§9.35. Federal Process.

(a) Applicability. This section applies to engineering or design related service contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding.

(b) Administrative qualification. A firm providing engineering and design related services must be administratively qualified under §9.34(b)(2) - (6) of this subchapter (relating to Non-federal ~~[Comprehensive]~~ Process), or use an indirect cost rate applicable under Federal Highway Administration regulations or guidelines, by the closing date of the RFP ~~[Request For Proposal]~~ to compete for contracts under this section. Section 9.34(b)(7) and (8) of this subchapter do not apply to a contract under this section.

(c) Consultant selection team (CST); replacements. Section 9.34(c) and (f) of this subchapter apply to contract procurement under this section.

(d) Request for proposal (RFP). Section §9.34(d) of this subchapter applies to contract procurement under this section.
~~[Not fewer than 14 calendar days before the solicitation closing date, the department will post on a web-based bulletin board an RFP providing the contract information and specifying the requirements for preparing and submitting a proposal.]~~

(e) Proposal; screening and evaluation. Section 9.34(e) and (g) of this subchapter apply to the contract procurement under this section.
~~[To be considered, a proposal must comply with the requirements specified in the RFP.]~~

(f) ~~[Proposal screening and evaluation.]~~

~~[(1) The department may disqualify a proposal if the department has knowledge that a firm on the project team or an employee of a firm on the project team is the subject of a final~~

~~administrative or judicial determination that the firm or employee has violated a statute or rule of a state licensing entity related to occupational or professional conduct.]~~

~~[(2) If a proposal is not disqualified under paragraph (1) of this subsection, the CST will screen the proposal to determine whether it complies with the requirements specified in the RFP. Each proposal that meets these requirements will be considered responsive to the RFP and evaluated.]~~

~~[(3) The CST will evaluate the responsive proposal according to the evaluation criteria detailed in the RFP based on factors the department has identified as most likely to result in the selection of the most qualified provider.]~~

~~[(g)] Short list; evaluation; selection. Section §9.34(h)-(j) of this subchapter apply to the contract procurement under this section. [The short list will consist of the most qualified providers, as indicated by the proposal scores.]~~

~~[(1) For single contract selections, the minimum number of short-listed prime providers is three, unless fewer than three prime providers submitted a responsive proposal.]~~

~~[(2) For multiple contract selections, the minimum number of short-listed prime providers is the number of desired contracts plus three, unless fewer than the desired number of prime providers submitted a responsive proposal.]~~

~~[(3) Notification.]~~

~~[(A) The department will notify each prime provider that submitted a proposal whether it was short-listed.]~~

1 ~~[(B) The department will notify each short-listed~~
2 ~~prime provider whether a short list meeting will be held.]~~

3 ~~[(h) Selection process.]~~

4 ~~[(1) The department will determine whether interviews~~
5 ~~are required for each solicitation and notify providers in the~~
6 ~~RFP.]~~

7 ~~[(A) If interviews are required, §9.34 (i) and~~
8 ~~(j) of this subchapter are applicable for this process.]~~

9 ~~[(B) If no interviews are required, the CST will~~
10 ~~select the best qualified provider, as indicated by the proposal~~
11 ~~scores, which will include evaluation of the prime provider's~~
12 ~~past performance scores in the department's evaluation database~~
13 ~~reflecting less than satisfactory performance. Also,~~
14 ~~§9.34(j)(2)-(4) of this subchapter are applicable for this~~
15 ~~process.]~~

16 ~~[(2) An interview is required for any specific~~
17 ~~deliverable contract that is \$1 million or more in value or any~~
18 ~~indefinite deliverable contract for higher-risk services as~~
19 ~~determined by the department based on anticipated project costs,~~
20 ~~number of contracts, or type of services.]~~

21
22 §9.38. Emergency Contract Process.

23 (a) Applicability. The emergency contract process
24 described in this section may be used when the executive
25 director or the executive director's designee certifies in
26 writing that an emergency situation, including a safety hazard,

1 a substantial disruption of the orderly flow of traffic and
2 commerce, or a risk of substantial financial loss to the
3 department, exists, and that an architectural, engineering, or
4 surveying services contract is needed to address the situation.

5 (b) Administrative qualification. If the emergency
6 contract is an engineering or design related services contract
7 directly related to a highway construction project and
8 reimbursed with federal-aid highway program (FAHP) funding, a
9 provider must be administratively qualified to compete for the
10 contract, and §9.34(b)(2)-(6) of this subchapter (relating to
11 Non-federal [~~Comprehensive~~] Process) applies to this section.

12 If the contract is not such a contract, a provider need not be
13 administratively qualified to compete for the contract, and
14 §9.34(b) of this subchapter applies to this section.

15 (c) Notification.

16 (1) After an emergency is certified, the department
17 will review its list of precertified firms. If there are a
18 sufficient number of firms, the department will notify at least
19 three of these firms.

20 (2) The department will inform the firms of the nature
21 of the emergency and will provide the firms with the
22 specifications for the remedy.

23 (d) Evaluation and selection. The department will evaluate
24 each firm's qualifications and select the best qualified firm to
25 perform the services.

1 §9.39. Urgent and Critical Process.

2 (a) Applicability. The urgent and critical process
3 described in this section may be used when the executive
4 director certifies in writing that an urgent and critical need
5 exists that cannot otherwise be met, that there is sufficient
6 objective reason to believe that a specific provider is the most
7 qualified to perform these architectural, engineering or survey
8 services based on that provider's demonstrated competence and
9 qualifications, and that federal funds will not be involved in
10 the contract. An urgent and critical need, is a circumstance
11 that does not rise to the level of an emergency situation as
12 described in §9.38 of this subchapter (relating to Emergency
13 Contract Process), but does expose the department to an undue
14 additional cost, that unless promptly addressed could escalate
15 to an emergency situation.

16 (b) Administrative qualification. Providers under this
17 section are subject to §9.34(b) of this subchapter (relating to
18 Non-federal [~~Comprehensive~~] Process).

19 (c) Process.

20 (1) After an urgent and critical need has been
21 identified the department will review its list of pre-certified
22 firms and survey available information to identify firms that
23 are most qualified to perform the work needed to resolve the
24 urgent and critical need.

(2) The executive director will determine whether there is sufficient information to determine that one provider is objectively the most qualified to perform this work.

(3) If information is not sufficiently available for the executive director to make this determination, the department may follow the process described in §9.38(c) and (d) of this subchapter to identify the most qualified firm.

§9.40. Negotiations.

(a) Contract negotiations.

(1) A contract that is subject to §9.34 of this subchapter (relating to Non-federal Process) or §9.35 of this subchapter (relating to Federal Process) [~~§§9.34, 9.35, 9.36, or 9.37 of this subchapter (relating to Comprehensive Process, Federal Process, Streamlined Process, or Accelerated Process, respectively)~~] will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with a selected prime provider to establish a satisfactory contract containing a fair and reasonable price for the services.

(3) A selected prime provider shall submit to the department the actual salary rates for the proposed team members and the non-salary costs, generated internally, to be billed directly. The department will reference this information in the negotiations.

1 (4) The department anticipates that a satisfactory
2 contract containing a fair and reasonable price for the services
3 may be negotiated within 30 days after the date that a selected
4 prime provider is notified of the selection. If an RFP [~~a~~
5 ~~solicitation~~] specifies that more than one contract will be
6 awarded, the time for negotiating the contracts is automatically
7 extended by a period equal to the number of additional contracts
8 to be awarded under that RFP [~~solicitation~~] multiplied by five
9 days. The department may grant additional extensions as
10 required. The RFP [~~solicitation~~] may specify a shorter or
11 longer time for the negotiations.

12 (5) If the department determines that a fair and
13 reasonable price cannot be negotiated, the department will
14 terminate negotiations with the selected prime provider and
15 proceed under this paragraph.

16 (A) Single contract selection. The department
17 will begin negotiations with the next highest-ranked prime
18 provider. This process will continue as necessary through the
19 three highest-ranked prime providers. If a fair and reasonable
20 price cannot be negotiated with any of the three highest-ranked
21 prime providers, the proposed contract shall be canceled. If
22 the proposed contract is canceled, it may be re-advertised.

23 (B) Multiple contract selection. The department
24 will begin negotiations with the next highest-ranked prime
25 provider not selected for a contract. This process will
26 continue as necessary through the short-listed prime providers.

1 If a fair and reasonable price cannot be negotiated with any of
2 the short-listed prime providers, the proposed contract shall be
3 canceled. If the proposed contract is canceled, it may be re-
4 advertised.

5 (b) Emergency contract negotiations.

6 (1) Contracts subject to §9.38 of this subchapter
7 (relating to Emergency Contract Process) will be negotiated in
8 accordance with this subsection.

9 (2) The department will enter negotiations with the
10 selected provider to establish a satisfactory contract
11 containing a fair and reasonable price for the services.

12 (3) If the department determines that a fair and
13 reasonable price cannot be negotiated, the department will
14 terminate negotiations with the provider and begin negotiations
15 with the next highest-ranked provider. This process will
16 continue as necessary through the notified firms.

17 (4) If a fair and reasonable price cannot be
18 negotiated with any of the notified firms, the department may
19 take any measure necessary to identify and solicit a firm that
20 is able to perform the services.

21 (c) Urgent and critical negotiations. The department will
22 negotiate with the selected firm to establish a fair and
23 reasonable price and the executive director will execute any
24 agreement.

25 (d) Indefinite deliverable work authorization negotiations.

(1) Indefinite deliverable work authorizations will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with a selected prime provider to establish a satisfactory work authorization containing a fair and reasonable price for the services.

(3) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the prime provider and begin negotiations with another prime provider with an indefinite deliverable contract.

§9.41. Contract Administration.

(a) Prime provider's percentage of work. A prime provider shall perform at least 30 percent of the contracted work with its own work force, unless otherwise approved by the department.

(b) Project manager replacement. The prime provider project manager may not be replaced without the prior written consent of the department.

(c) Department audits. The department may perform interim and final audits.

(d) Performance evaluations.

(1) The department project manager will document the prime provider's performance on the contract by evaluating the prime provider project manager and the firm and may include evaluation of the prime provider's employee who is assisting

1 with the management of a work authorization. Evaluations will
2 be conducted at least once every 12 months [~~during the ongoing~~
3 ~~contract activity~~] and at the completion of the contract.

4 (2) Further evaluations pertaining to project
5 constructability may be conducted during project construction
6 and at the completion of the construction contract.

7 (3) The department will give a copy of each completed
8 performance evaluation to the prime provider for review and
9 comment. The prime provider's comments will be entered into the
10 department's evaluation database.

11 (4) Performance evaluation scores will be entered into
12 the department's evaluation database and may be used for the
13 purpose of provider selection.

14 (e) Negotiated resolution of disputes. To every extent
15 possible, disputes between a prime provider and the department's
16 project manager should be resolved during the course of the
17 contract.

18 (f) Prime provider performance evaluation dispute review.

19 (1) If a resolution is not reached with the
20 department's project manager and district engineer or division
21 director, the prime provider may request a review by the PEPS
22 Division Director by submitting a written request for review to
23 the PEPS Division Director not later than 10 days after the date
24 of receipt of a final signed performance evaluation. In the
25 written request, the prime provider must identify the issue or
26 error and provide supporting information.

1 (2) The PEPS Division Director will gather
2 information, study relevant issues, and meet informally with the
3 prime provider and relevant department staff. The PEPS Division
4 Director may void the performance evaluation, request a re-
5 evaluation or adjustment, or affirm the original performance
6 evaluation. The PEPS Division Director will provide the
7 decision to the prime provider in writing. The PEPS Division
8 Director's decision is final.

9 (g) Resolution of contracting or compensation disputes. If
10 resolution of a contracting or compensation dispute between the
11 prime provider and department's project manager or district
12 engineer is not reached, the PEPS Division Director may in the
13 director's discretion participate in the resolution of the
14 dispute. The prime provider may file a written claim under §9.2
15 of this chapter (related to Contract Claim Procedure).

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND
SURVEYING SERVICES

§9.36. Streamlined Process.

(a) Applicability. The streamlined process described in this section may be used for indefinite deliverable contracts that are not subject to §9.35 of this subchapter (relating to Federal Process) and that are for higher-risk services as determined by the department based on anticipated project costs, number of contracts, or type of service.

(b) Administrative qualification. Section 9.34(b) of this subchapter (relating to Comprehensive Process) applies to contracts under this section.

(c) Selection process. The department will determine whether interviews are required for each solicitation and notify providers in the RFQ. If interviews are required, §9.34(c)-(i) of this subchapter are applicable for this process. If no interviews are required, §9.34(c)-(e) and (g) of this subchapter are applicable for this process.

(d) Selection. If interviews are required, §9.34(j) of this subchapter is applicable for this process. If no interviews are required, §9.37(d) of this subchapter (relating to Accelerated Process) is applicable for this process.

§9.37. Accelerated Process.

(a) Applicability. The accelerated process described in this section may be used for contracts that are not subject to §§9.34, 9.35, or 9.36 of this subchapter (relating to

NOTE: REPEAL

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Exhibit C

1 Comprehensive Process, Federal Process, or Streamlined Process,
2 respectively).

3 (b) Administrative qualification. Section 9.34(b) of this
4 subchapter applies to contracts under this section.

5 (c) Selection process. Section 9.34(c) - (e) and (g) of
6 this subchapter are applicable for this process.

7 (d) Selection.

8 (1) Basis of final selection. The consultant
9 selection team will select the best qualified provider, as
10 indicated by the SOQ scores, which will include evaluation of
11 the prime provider's past performance scores in the Consultant
12 Certification Information System database reflecting less than
13 satisfactory performance.

14 (2) Tie scores. The PEPS Division Director will break
15 a tie using the following method.

16 (A) The first tie breaker is the scores for the
17 selection criterion with the highest relative importance factor
18 (RIF).

19 (B) The remaining selection criteria will be
20 compared in the order of decreasing RIF until the tie is broken.

21 (C) If the providers have identical scores on all
22 of the selection criteria, the provider will be chosen by random
23 selection.

24 (3) Notification. The department will:

25 (A) provide written notification to a prime
26 provider selected for contract negotiation and arrange a meeting
27 to begin contract negotiations;

1 (B) provide written notification to each prime
2 provider that was not selected, notifying the provider of the
3 non-selection; and

4 (C) publish the selected provider on a web-based
5 bulletin board.

6 (4) Appeal. Section 9.34(j)(4) of this subchapter
7 applies to this section.

REPEAL